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Attorneys for Defendants
JOHN BARGETTO and
BARGETTO'S SANTA CRUZ WINERY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARILYN CHURCHILL, an individual,

Plaintiff,

v.

JOHN BARGETTO, in his individual and
official capacities; BARGETTO'S SANTA
CRUZ WINERY, a California Corporation;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. C07-03007 MMC

ANSWER TO COMPLAINT

DEMAND FOR JURY TRIAL

COMES NOW Defendants JOHN BARGETTO, in his individual and official capacities;
BARGETTO'S SANTA CRUZ WINERY, a California corporation, (hereinafter "Defendants")
and herewith answer the Complaint as follows:

1. Answering Paragraph 1 of Plaintiff's Complaint, Defendants deny each and every
allegation contained in said Paragraph.

2. Answering Paragraph 2 of Plaintiff's Complaint, Defendants deny each and every
allegation contained in said Paragraph.

3. Answering Paragraph 3 of Plaintiff's Complaint Defendants deny each and every
allegation contained in said Paragraph.

4. Answering Paragraph 4 of Plaintiff's Complaint, Defendants admit only that

1 Plaintiff is an individual; otherwise, Defendants lack information and belief such that they cannot
2 admit such allegations and therefore deny them.

3 5. Answering Paragraph 5 of Plaintiff's Complaint, Defendants admit said allegations
4 in this paragraph.

5 6. Answering Paragraph 6 of Plaintiff's Complaint, Defendants admit said allegations
6 in this paragraph.

7 7. Answering Paragraph 7 of Plaintiff's Complaint, Defendants are without sufficient
8 knowledge or information to form a belief as to the truth of the allegations contained in said
9 paragraph, and on that basis, denies each and every allegation contained therein.

10 8. Answering Paragraph 8 of Plaintiff's Complaint, Defendants admit that there was
11 an agreement with Plaintiff; however, they deny the other allegations on information and belief.

12 9. Answering Paragraph 9 of Plaintiff's Complaint, Defendants deny the allegations
13 in this paragraph.

14 10. Answering Paragraph 10 of Plaintiff's Complaint, Defendants deny the allegations
15 in this paragraph.

16 11. Answering Paragraph 11 of Plaintiff's Complaint, Defendants are without
17 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
18 said paragraph, and on that basis, denies each and every allegation contained therein.

19 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendants are without
20 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
21 said paragraph, and on that basis, denies each and every allegation contained therein.

22 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendants are without
23 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
24 said paragraph, and on that basis, denies each and every allegation contained therein.

25 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendants are without
26 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
27 said paragraph, and on that basis, denies each and every allegation contained therein.

28 15. Answering Paragraph 15 of Plaintiff's Complaint, Defendants are without

1 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
2 said paragraph, and on that basis, denies each and every allegation contained therein.

3 16. Answering Paragraph 16 of Plaintiff's Complaint, Defendants are without
4 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
5 said paragraph, and on that basis, denies each and every allegation contained therein.

6 17. Answering Paragraph 17 of Plaintiff's Complaint, Defendants are without
7 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
8 said paragraph, and on that basis, denies each and every allegation contained therein.

9 18. Answering Paragraph 18 of Plaintiff's Complaint, Defendants are without
10 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
11 said paragraph, and on that basis, denies each and every allegation contained

12 19. Answering Paragraph 19 of Plaintiff's Complaint, Defendants are without
13 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
14 said paragraph, and on that basis, denies each and every allegation contained therein.

15 20. Answering Paragraph 20 of Plaintiff's Complaint, Defendants are without
16 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
17 said paragraph, and on that basis, denies each and every allegation contained therein.

18 21. Answering Paragraph 21 of Plaintiff's Complaint, Defendants are without
19 sufficient knowledge or information to form a belief as to the truth of the allegations contained in
20 said paragraph, and on that basis, denies each and every allegation contained therein.

21 22. Answering Paragraph 22 of Plaintiff's Complaint, Defendants deny each and every
22 allegation contained in said Paragraph.

23 23. Answering Paragraph 23 of Plaintiff's Complaint, Defendants deny each and every
24 allegation contained in said Paragraph.

25 24. Answering Paragraph 24 of Plaintiff's Complaint, Defendants deny each and every
26 allegation contained therein.

27 25. Answering Paragraph 25 of Plaintiff's Complaint, Defendants deny each and every
28 allegation contained therein.

26. Answering Paragraph 26 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

27. Answering Paragraph 27 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

28. Paragraph 28 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

29. Answering Paragraph 29 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

30. Answering Paragraph 30 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

31. Answering Paragraph 31 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

32. Answering Paragraph 32 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

33. Answering Paragraph 33 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

34. Answering Paragraph 34 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

35. Answering Paragraph 35 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

36. Answering Paragraph 36 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

37. Answering Paragraph 37 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

38. Answering Paragraph 38 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

39. Answering Paragraph 39 of Plaintiff's Complaint, Defendants deny each and every allegation contained in said Paragraph.

1 40. Answering Paragraph 40 of Plaintiff's Complaint, Defendants deny each and every
2 allegation contained in said Paragraph.

3 41. Answering Paragraph 41 of Plaintiff's Complaint, Defendants deny each and every
4 allegation contained in said Paragraph.

5 42. Answering Paragraph 42 of Plaintiff's Complaint, Defendants deny each and every
6 allegation contained in said Paragraph.

7 43. Answering Paragraph 43 of Plaintiff's Complaint, Defendants deny each and every
8 allegation contained in said Paragraph.

9 44. Answering Paragraph 44 of Plaintiff's Complaint, Defendants deny each and every
10 allegation contained in said Paragraph.

11 45. Answering Paragraph 45 of Plaintiff's Complaint, Defendants deny each and every
12 allegation contained in said Paragraph.

13 46. Answering Paragraph 46 of Plaintiff's Complaint, Defendants deny each and every
14 allegation contained in said Paragraph.

15 47. Answering Paragraph 47 of Plaintiff's Complaint, Defendants deny each and every
16 allegation contained in said Paragraph.

17 48. Answering Paragraph 48 of Plaintiff's Complaint, Defendants deny each and every
18 allegation contained in said Paragraph.

19 49. Answering Paragraph 49 of Plaintiff's Complaint, Defendants deny each and every
20 allegation contained in said Paragraph.

21 50. Answering Paragraph 50 of Plaintiff's Complaint, Defendants deny each and every
22 allegation contained in said Paragraph.

23 51. Answering Paragraph 51 of Plaintiff's Complaint, Defendants deny each and every
24 allegation contained in said Paragraph.

25 52. Answering Paragraph 52 of Plaintiff's Complaint, Defendants deny each and every
26 allegation contained in said Paragraph.

27 53. Answering Paragraph 53 of Plaintiff's Complaint, Defendants deny each and every
28 allegation contained in said Paragraph.

1 54. Answering Paragraph 54 of Plaintiff's Complaint, Defendants deny each and every
2 allegation contained in said Paragraph.

3 55. Answering Paragraph 55 of Plaintiff's Complaint, Defendants deny each and every
4 allegation contained in said Paragraph.

5 56. Answering Paragraph 56 of Plaintiff's Complaint, Defendants deny each and every
6 allegation contained in said Paragraph.

7 57. Answering Paragraph 57 of Plaintiff's Complaint, Defendants deny each and every
8 allegation contained in said Paragraph.

9 **AFFIRMATIVE DEFENSES**

10 1. As and for a first, separate and distinct affirmative defense to the Complaint, and
11 each and every cause of action thereof, Defendants allege that Plaintiff's Complaint fails to state
12 facts sufficient to constitute a cause of action against DEFENDANTS.

13 2. As and for a second, separate and distinct affirmative defense to the Complaint,
14 and each and every cause of action thereof, Defendants allege that Plaintiff is barred by the
15 Doctrine of Estoppel.

16 3. As for a third, separate and distinct affirmative defense to the Complaint, and each
17 and every cause of action thereof, Defendants allege that Plaintiff is barred by the Doctrine of
18 Laches.

19 4. As for a fourth, separate and distinct affirmative defense to the Complaint, and
20 each and every cause of action thereof, Defendants allege that Plaintiff is barred by the Doctrine
21 of Unclean Hands.

22 5. As for a fifth, separate and distinct affirmative defense to the Complaint, and each
23 and every cause of action thereof, Defendants allege that Plaintiff has waived any and all claims
24 and is barred and estopped from alleging the matters set forth in the Complaint.

25 6. As for a sixth, separate and distinct affirmative defense to the Complaint, and each
26 and every cause of action thereof, Defendants allege that at all times and places mentioned herein,
27 plaintiff failed to mitigate the amount of damages. The damages claimed by Plaintiff could have
28 been mitigated by due diligence on Plaintiff's part or by one acting under similar circumstances.

1 The failure to mitigate is a bar to recovery under the Complaint.

2 7. As for a seventh, separate and distinct affirmative defense to the Complaint, and
3 each and every cause of action thereof, Defendants allege that each of the causes of action set
4 forth in the Complaint is barred by the applicable statute of limitations, including, but not limited
5 to, California Code of Civil Procedure sections 337, 338, 340, 343.

6 8. As for an eighth, separate and distinct affirmative defense to the Complaint, and
7 each and every cause of action thereof, Defendants allege on information and belief that the sole
8 and proximate cause of the acts complained of by Plaintiff were due to the acts and/or omissions
9 of persons and entities other than Defendants.

10 9. As for a ninth, separate and distinct affirmative defense to the Complaint, and each
11 and every cause of action thereof, Defendants allege that Defendants' conduct was not the cause
12 in fact, or the proximate cause of any of the losses alleged by Plaintiff.

13 10. As for a tenth, separate and distinct affirmative defense to the Complaint, and each
14 and every cause of action thereof, Defendants allege that the causes of action set forth in the
15 Complaint are, and each of them is, barred in whole or in part by the privilege of fair competition.

16 11. As for an eleventh, separate and distinct affirmative defense to the Complaint, and
17 each and every cause of action thereof, Defendants allege that Plaintiff was negligent, careless,
18 reckless, or otherwise at fault in and about the matters alleged in the Complaint.

19 12. As and for a twelfth, separate and distinct affirmative defense to the Complaint,
20 and each and every cause of action thereof, Defendants allege that said defendants acted at all
21 times within the scope of discretion, in good faith, with due care, and pursuant to applicable rules,
22 regulations and practices reasonably and in good faith belief to be in accordance with the
23 Constitution and laws of the United States or the State of California, and this Defendants are,
24 therefore, not liable.

25 13. As and for a thirteenth, separate and distinct affirmative defense to the Complaint,
26 and each and every cause of action thereof, Defendants allege that this Court lacks jurisdiction
27 over the subject matter of this action.

28 14. As and for a fourteenth, separate and distinct affirmative defense to the Complaint,

1 and each and every cause of action thereof, Defendants allege that this Court lacks venue.

2 15. As and for a fifteenth, separate and distinct affirmative defense to the Complaint,
3 and each and every cause of action thereof, Defendants allege that the Copyright Registrations
4 alleged in the Complaint were improperly filed with the United State Copyright Office, if they
5 were filed at all.

6 16. As and for a sixteenth, separate and distinct affirmative defense to the Complaint,
7 and each and every cause of action thereof, Defendants allege that *jus tertii* bars any and all
8 claims of Plaintiff, including that for injunctive relief, as Defendants believe a third party has or
9 may have superior rights to those alleged by Plaintiff.

10 17. As and for a seventeenth, separate and distinct affirmative defense to the
11 Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's alleged
12 copyrights are weak and were not infringed, and therefore, the scope of protection for said weak
13 marks does not extend to Defendants' products.

14 18. As and for an eighteenth, separate and distinct affirmative defense to the
15 Complaint, and each and every cause of action thereof, Defendants allege that there was consent.

16 19. As and for a nineteenth, separate and distinct affirmative defense to the Complaint,
17 and each and every cause of action thereof, Defendants allege that the forum is inconvenient.

18 20. As and for a twentieth, separate and distinct affirmative defense to the Complaint,
19 these answering Defendants allege that plaintiff is barred by the Doctrine of Estoppel, as it has
20 acquiesced and permitted these answering Defendants and others to use, copy, create derivative
21 works from plaintiff. These answering Defendants relied on Plaintiff's acquiescence and implied
22 authorizations to its detriment.

23 21. As and for a twenty-first, separate and distinct affirmative defense to the
24 Complaint, these answering defendants allege that Plaintiff is barred by the Doctrine of Laches as
25 Plaintiff has known about these answering Defendants and their activities for several years and
26 has known about the works available to the public at large for many years prior to this time.

27 22. As and for a twenty-second, separate and distinct affirmative defense to the
28 Complaint, these answering Defendants allege that Plaintiff's claims are barred as the works in

1 question are in the public domain and have lost any copyright protection that they might have
2 had.

3 23. As and for a twenty-third, separate and distinct affirmative defense to the
4 Complaint, these answering Defendants allege that Plaintiff's claims are invalid as there has been
5 no "copying" as defined by The Copyright Act.

6 24. As and for a twenty-fourth, separate and distinct affirmative defense to the
7 Complaint, these answering Defendants allege that Plaintiff's claims are barred by the First Sale
8 Doctrine.

9 25. As and for a twenty-fifth, separate and distinct affirmative defense to the
10 Complaint, these answering Defendants allege that its actions fall within the Fair Use Doctrine,
11 thereby invalidating the cause of action set forth in the Complaint.

12 26. As and for a twenty-sixth, separate and distinct affirmative defense to the
13 Complaint, these answering Defendants allege that Plaintiff has abandoned its alleged rights in
14 the works by acts which have caused the marks to lose their significance as copyrighted works.

15 27. As and for a twenty-seventh, separate and distinct affirmative defense to the
16 Complaint, these answering Defendants allege that it had an implied license to use and/or modify
17 and/or copy each and every work claimed to be owned by Plaintiff based on Plaintiff's conduct.

18 28. As and for a twenty-eighth, separate and distinct affirmative defense to the
19 Complaint, these answering Defendants allege that Plaintiff is barred by the Doctrine of Innocent
20 Intent and that these answering Defendants acted with innocent intent in the actions which were
21 taken with respect to the drawings in question and made reasonable efforts to ensure that it was
22 not required to obtain additional "permission" to use any of the alleged copyrighted works set
23 forth in the Complaint.

24 29. As and for a twenty-ninth, separate and distinct affirmative defense to the
25 Complaint, these answering Defendants allege that Plaintiff is barred by the Doctrine of Waiver
26 as a result of his conduct as described herein.

27 30. As and for a thirtieth, separate and distinct affirmative defense to the Complaint,
28 these answering Defendants allege that and any all statutory damages are barred by the applicable

1 statute of limitations and other bars related to statutory damages.

2 31. As and for a thirty-first, separate and distinct affirmative defense to the Complaint,
3 these answering Defendants allege Plaintiff's claims fail as the alleged copyright is invalid and
4 not infringed.

5 32. As and for a thirty second, separate and distinct affirmative defense to the
6 Complaint, these answering Defendants state that they are informed and believe, and upon such
7 basis allege, that Plaintiff has not obtained any grant of rights from the copyright owner of the
8 work(s) in question in this matter or third parties have superior rights to said work(s).

9 33. As and for a thirty third, separate and distinct affirmative defense to the Second
10 Amended Complaint, these answering Defendants allege Plaintiff has not complied with the
11 statutory formalities of either the Copyright Act of 1909 or the Copyright Act of 1976, 17 U.S.C.
12 § 101, et. seq.

13 34. As and for a thirty fourth, separate and distinct affirmative defense to the Second
14 Amended Complaint, these answering Defendants allege that, due to the timing of Plaintiff's
15 purported registration of its alleged copyrights, it is barred from claiming or receiving attorney's
16 fees and statutory damages under 17 U.S.C. §412.

17 WHEREFORE, these answering Defendants pray for judgment as follows:

- 18 1. That Plaintiff take nothing by her Complaint;
19 2. For reasonable attorney's fees and costs of suit incurred herein; and
20 3. For such other and further relief as the Court deems proper.

21 Dated: July 3, 2007

ROPERS, MAJESKI, KOHN & BENTLEY

22
23 By: /s/ Bruce C. Piontkowski
24 BRUCE C. PIONTKOWSKI
25 Attorneys for Defendants
26
27
28

1 Defendants hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of
2 Court.

3 Dated: July 3, 2007

ROPERS, MAJESKI, KOHN & BENTLEY

5 By: /s/ Bruce C. Piontkowski
6 BRUCE C. PIONTKOWSKI
7 Attorneys for Defendants
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